Supreme Court, U.S.
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No. _____

In The Supreme Court of the United States

JASON JAGODKA,
Petitioner,

v.

BLAINE C. LAFLER, WARDEN,
Respondent.

On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI
with Appendix

* **Phillip D. Comorski**
ATTORNEY AT LAW
535 Griswold
Suite 2632 Buhl Building
Detroit, MI 48226

313-963-5101

* *Counsel of Record*
Counsel for Petitioner

October, 2005

LEGAL ADVANTAGE • 432 Walnut Street • Cincinnati, OH 45202
(800) 581-2252

QUESTIONS PRESENTED FOR REVIEW

I. DID THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN AND THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRONEOUSLY DISMISS PETITIONER JASON JAGODKA'S PETITION FOR WRIT OF HABEAS CORPUS BY HOLDING THAT HE WAS NOT ENTITLED TO EQUITABLE TOLLING OF THE STATUTE OF LIMITATIONS, EVEN THOUGH HE HAS DEMONSTRATED THAT HIS IGNORANCE OF 28 U.S.C. § 2244 BETWEEN 1996 AND 2003 WAS REASONABLE DUE TO HIS YOUNG AGE AT THE TIME, HE SUBSEQUENTLY DILIGENTLY PURSUED HABEAS CORPUS RELIEF, AND THERE WAS A COMPLETE ABSENCE OF PREJUDICE TO THE RESPONDENT?

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OPINIONS BELOW

United States District Court Judge Arthur J. Tarnow denied Petitioner Jagodka's petition for writ of habeas corpus in an unpublished opinion and order on February 26, 2004. The Order is attached as Appendix C. Judge Tarnow went on to grant Petitioner Jagodka's certificate of appealability as to the issue of whether Petitioner Jagodka was entitled to equitable tolling, due to the fact that the petition was filed beyond the 1-year deadline. This Order of April 30, 2004 is attached as Appendix B.

A three judge panel of the Sixth Circuit denied Petitioner Jagodka's appeal in an unpublished opinion dated July 27, 2005. This Order is attached as Appendix A.

Petitioner Jagodka petitions for certiorari to this Court from these opinions and orders denying him entitlement to equitable tolling.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). *Hohn v. United States*, 524 U.S. 236 (1998).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. §1254(1):

Cases in the courts of appeals may be reviewed by the Supreme Court by. . . writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. §1915(a)(1):

Subject to subsection (b), any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefore, by a person who submits an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.

28 U.S.C. § 2244 (d)(1):

A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of --

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

STATEMENT OF THE CASE

Petitioner Jason Paul Jagodka was charged with first degree murder (Mich. Comp. Laws 750.316), and felony firearm (Mich. Comp. Laws 769.227b). Petitioner was convicted of second degree murder (Mich. Comp. Laws 750.317), and felony firearm (Mich. Comp. Laws 769.227b), pursuant to a no contest plea before Monroe County Circuit Court, Monroe County, Michigan, Judge William F. LaVoy on August 21, 1996. On that same day, as part of a plea agreement, a sentence recommendation from the prosecutor's office stated that Jagodka would receive a minimum sentence of 25 years, and co-defendant Dennis Pogarch would receive a minimum sentence of 20 years, and the parties also agreed that since the defendants were juveniles, that a juvenile dispositional hearing would be conducted prior to sentencing.

Petitioner Jagodka is currently serving a sentence of 25 to 50 years in the Michigan Corrections System. Following his sentencing, Petitioner Jagodka, a sixteen year-old child, never instituted any post-conviction proceedings at the appellate level. Petitioner then filed a Motion for Relief from Judgment in the trial court on January 12, 2001. On April 23, 2001, Judge LaVoy entered an opinion and order denying the motion.

Petitioner Jagodka filed an Application for Leave to Appeal with the Michigan Court of Appeals, which was denied. *People v. Jagodka*, No. 240512 (Mich. Ct. App., June

25, 2002). Petitioner Jagodka filed an Application for Leave to Appeal with the Michigan Supreme Court, which was denied in a standard order. *People v. Jagodka*, No. 122180 (Mich. Sup. Ct., February 28, 2003). Reconsideration was denied by the Michigan Supreme Court on May 30, 2003. *People v. Jagodka*, No. 122180 (Mich. Sup. Ct., May 30, 2003).

Petitioner Jagodka, filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, in the District Court on June 12, 2003. The case was referred to District Judge Arthur J. Tarnow, who, on March 2, 2004, issued an opinion dismissing the petition due to the fact that the petition was filed beyond the 1-year deadline of 28 U.S.C. §§ 2244(d). Judgment in accord was entered on the same day.

Petitioner Jagodka filed a Notice of Appeal on March 5, 2004, and on May 1, 2004, Judge Tarnow granted Petitioner Jagodka a certificate of appealability with respect to the issue of equitable tolling.

A three judge panel of the Sixth Circuit denied Petitioner Jagodka's appeal in an unpublished opinion dated July 27, 2005.

Petitioner Jagodka petitions for certiorari to this Court from these opinions and orders denying him entitlement to equitable tolling.

ARGUMENT

THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN AND THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRONEOUSLY DISMISSED PETITIONER JASON JAGODKA'S PETITION FOR WRIT OF HABEAS CORPUS BY HOLDING THAT HE WAS NOT ENTITLED TO EQUITABLE TOLLING OF THE STATUTE OF LIMITATIONS, EVEN THOUGH HE HAS DEMONSTRATED THAT HIS IGNORANCE OF 28 U.S.C. §§ 2244 BETWEEN 1996 AND 2003 WAS REASONABLE DUE TO HIS YOUNG AGE AT THE TIME, HE SUBSEQUENTLY DILIGENTLY PURSUED HABEAS CORPUS RELIEF, AND THERE WAS A COMPLETE ABSENCE OF PREJUDICE TO THE RESPONDENT.

Petitioner Jason Paul Jagodka tendered a no contest plea before Monroe County Circuit Court, Monroe County, Michigan, Judge William F. LaVoy on August 21, 1996. On that same day, as part of a plea agreement, a sentence "recommendation" from the prosecutor's office stated that Petitioner Jason Paul Jagodka would receive a minimum sentence of 25 years, and co-defendant Dennis Pogarch would

receive a minimum sentence of 20 years, and the parties also agreed that since the defendants were juveniles, that a juvenile dispositional hearing would be conducted prior to sentencing.

Proceedings in the State Courts

The charges against Petitioner Jason Paul Jagodka arose out of an incident which allegedly occurred during on January 23, 1996. The prosecution's theory of the case was that Petitioner and co-defendant Dennis Pogarch, both of whom were 16-year-old high school youths, shot and killed Petitioner's mother. The defense position was that Petitioner was coerced and/or induced into committing the act by co-defendant Dennis Pogarch.

After entering into the plea, the parties agreed that since the defendants were juveniles, that a dispositional hearing would be conducted prior to sentencing.

On October 25, 1996, Judge LaVoy conducted a sentence dispositional hearing for both of the defendants, and subsequently took the matter under advisement. On October 29, 1996, Judge LaVoy ruled that both defendants would be sentenced as adults rather than juveniles.

As stated above, Petitioner Jagodka did not claim an appeal of right in the Michigan Court of Appeals. However, he subsequently file a Motion for Relief from Judgment in the trial court, which was denied on April 23, 2001 by Judge LaVoy.